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SONY MALAYSIA SDN BHD v. ASIAN BROADCASTING NETWORK (M) SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
KHADIJAH IDRIS JC
[COMPANIES (WINDING UP) NO: 28NCC-3-01-2016]
B 28 JUNE 2016

CIVIL PROCEDURE: *Stay of proceedings – Winding up petition – Stay of proceedings pending proposed capital injection into debtor's company – Whether debts owing to creditors would be settled if proposed capital injection falls through* C *– Whether there were special circumstances warranting discretion of court to order stay of winding up proceedings and hearing or petition – Whether creditors would be prejudiced by stay of proceedings – Rules of Court 2012, O. 92 r. 4*

COMPANY LAW: *Winding up – Stay of proceedings – Stay of proceedings* D *pending proposed capital injection into debtor's company – Whether debts owing to creditors would be settled if proposed capital injection falls through – Whether there were special circumstances warranting discretion of court to order stay of winding up proceedings and hearing or petition – Whether creditors would be prejudiced by stay of proceedings – Companies Act 1965, ss. 221 & 243*

E The respondent ran a business of providing subscription-based television and radio services, radio broadcasting, production and distribution of film and television programming. At the High Court, the petitioner's successfully obtained summary judgment against the respondent. Subsequently, the petitioner served a notice to the respondent, demanding the latter to pay the judgment sum within 21 days, failing which winding up proceedings would F be instituted against the respondent. The petitioner eventually presented the petition which was supported by four other creditors who filed their respective notices to appear. The respondent filed an application pursuant to ss. 221 and 243 of the Companies Act 1965 and O. 92 r. 4 of the Rules of Court 2012, seeking, *inter alia*, a stay and adjournment of the winding up G proceedings for six months or a period to be determined by the court ('encl. 15'). Alternatively, the respondents prayed for a three-month stay. It was the respondent's contention that there were special circumstances warranting a stay of the petition as it was in the midst of completing a joint venture arrangement with a third party to pump money into the respondent H company for purpose of revitalising the respondent back to action to pay its creditors, including the petitioner. The petitioner objected against encl. 15 but the creditors were willing to give time to respondent. The issue that arose for the court's determination was whether there were special circumstances to justify the court to exercise its discretion to order a stay of the winding I up proceedings and hearing of the petition.

Held (allowing application; staying winding up proceedings and hearing of petition for three months):

(1) There were special circumstances warranting the court to concede to the respondent's application for a stay. The respondent had taken steps and made serious efforts to solve its financial problem with its creditors, including the petitioner. If the proposed capital injection by the investor falls through, the full debts owing to the petitioner and the creditors will be settled. This would certainly be better than a situation where the respondent is wound up and the creditors will be left with nothing. (para 30)

(2) The respondent had shown a memorandum of understanding ('MOU') executed by the respondent, its shareholders and the investor. The execution of the MOU showed the respondent's commitment to deal with its financial position in order to salvage its very existence as a going concern and a commercially-solvent entity. As such, the serious and earnest effort made by the respondent should be allowed to continue, especially so when the end result would benefit the petitioners and the creditors. The investor is a foreigner and the parties are looking at an investment of a large sum of money. Understandably, this would require time to look into details of the terms of the joint venture agreement especially, as in any other business undertaking, the feasibility and viability of the project. (para 30)

(3) Even though the creditors supported the petition, they were willing to give time to the respondent to pursue and complete the arrangement with the investor. The creditors' stand was the most reasonable thing to do since the creditors, being the majority creditors in value, would be adversely affected if the respondent was wound up. (para 30)

Case(s) referred to:

Boon Wah Air-Conditioning Engineering Sdn Bhd v. Bina Goodyear Bhd [2014] 1 LNS 1481 HC ***(refd)***

Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1 FC ***(refd)***

Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(refd)***

Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd [2002] 3 CLJ 380 CA ***(refd)***

Permodalan MBF Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors [1988] 1 CLJ 31; [1988] 1 CLJ (Rep) 244 SC ***(refd)***

Ting Yuk Kiong v. Mawar Biru Sdn Bhd & Anor [1995] 3 CLJ 136 HC ***(refd)***

Vijayalakshmi Devi Nadchatiram v. Dr Mahadevan Nadchatiram & Ors [1995] 3 CLJ 493 FC ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 176, 218(2)(a), 221, 243

Companies (Winding-up) Rules 1972, r. 29

Rules of Court 2012, O. 92 r. 4

A *For the petitioner - Alwin Rajasurya; M/s Chooi & Co*
For the respondent - Prem Ramachandran & Shankar Govinth; M/s Kumar Partnership
For the supporting creditor - Azhar Nur Abd Manaf; M/s Zain Johnson & Assocs
- Kwong Chiew Ee; M/s Rahmat Lim & Partners

Reported by Najib Tamby

B

JUDGMENT

Khadijah Idris JC:

Introduction

C **[1]** This is an appeal by Sony Malaysia Sdn Bhd ("petitioner") against the court's decision made on 5 April 2016 allowing stay of winding up proceeding against Asian Broadcasting Network (M) Sdn Bhd ("respondent"). Pursuant to the said court order, the winding up proceeding and the hearing of the petition WA-28NCC-3-01-2016 ("petition") was stayed for three months.

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Background

[2] The respondent was incorporated on 23 May 2000 under the Companies Act 1965 (Companies Act) with a registered and business address at No. 2 Jalan Suria Puchong 6, Pusat Perniagaan Suria Puchong, 47710,
E Puchong, Selangor ("registered and business address"). The nature of business of the respondent is the provision of subscription based television and radio services, radio broadcasting, production and distribution of film and television programming.

[3] On 18 September 2015, the High Court Shah Alam *vide* Shah Alam
F Suit No: 22NCVC-286-05-2015 allowed the petitioner's application for summary judgment against the respondent. Pursuant to the said judgment, the respondent is to pay the petitioner:

(a) the sum of RM7,057,254;

G (b) interest on the sum of RM7,057,254 at the rate of 5% per annum from 3 April 2015 to the date of full and final settlement; and

(c) costs of RM3,000

[4] Subsequently the petitioner through its solicitors issued and served on
H the respondent a notice dated 30 November 2015 pursuant to s. 218(2)(a) of the Companies Act ("s. 218 notice") by hand at the registered and business address of the respondent.

[5] The s. 218 notice demanded the respondent to pay within 21 days the monies as adjudged in the court order dated 18 September 2015. *Via* the said
I notice the respondent was forewarned of its failure to comply with the said demand shall be deemed as its inability to pay its debts and winding up proceedings shall be instituted against the respondent.

[6] On 4 January 2016 the petitioner presented the petition. The basis of the petition can be found at para. 5 of the petition which read as follows:

> 5. The Company is indebted to the Petitioner in respect of the following sums:
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> (a) the sum of Ringgit Malaysia Seven Million Fifty-Seven Thousand Two Hundred And Fifty-Four Only (RM7,057,254.00) ("the Principal Sum");
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> (b) interest on the Principal Sum at the rate of 5% per annum from 3 April 2015 to the date of full and final settlement; and
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> (c) costs in the sum of Ringgit Malaysia Three Thousand only (RM3,000.00) being the sums adjudged pursuant to the Summary Judgment dated 18 September 2015 granted at the Shah Alam High Court *vide* Shah Alam Suit No.: 22NCVC-286-05-2015.
>
> 6. However, the Company has to date still failed, refused and/or neglected to pay the aforesaid sums or any part thereof as demanded.
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> 7. The Company is unable to pay its debts.
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> 8. In the circumstances set out above, it is just and equitable that the Company should be wound up.

[7] The hearing of the petition was scheduled on 7 March 2016.

[8] The respondent filed a notice under r. 29 of the Companies (Winding-up) Rules 1972 of their intention to appear and oppose the petition.

[9] The following creditors filed their notice of intention to appear and support the petition:

(a) ARRIS Technology, Inc (Delaware Company Reg No. 2702865) for debt of RM48,133,369.76;

(b) ARRIS Solutions Malaysia Sdn Bhd (Company No. 9822880) for debt of RM549,574.50;

(c) ARRIS Solutions Inc (Delaware Company Reg No. 4469069) for debt of RM48,133,369.76;

(d) Max Net Enterprise (Company No.: 002298857-X) for debt of RM370,543.

[10] On 2 March 2016 the respondent filed an application (encl. 15) pursuant to ss. 221 and 243 of the Companies Act and O. 92 r. 4 of the Rules of Court 2012 and/or within the jurisdiction of the court seeking the following prayers:

(a) that the winding up proceedings herein is stayed for a period of six months or for a period to be determined by the court;

(b) that the hearing of the petition be adjourned for a period of six months or for a period to be determined by the court; and

(c) that the costs of this application be borne and paid for by the respondent.

The Respondent's Submission

[11] In support of its application for a stay (encl. 16) the respondent averred the following:

(a) the respondent admitted the debt due to the petitioner. However it denied its inability to pay the indebtedness and states that respondent will be able to pay its outstanding debts if given time to complete the capital injunction exercise which is undergoing;

(b) the financial crunch faced by the respondent is due to the RM450 million loan it obtained from Bank Pembangunan Malaysia Berhad (BPMB) was unilaterally frozen by BPMB. A copy of the loan facility dated 5 December 2012 is marked as exh. "SS1" encl. 16. The purpose of the loan was to finance a digital interactive television and data services over hybrid fiber coaxial cable network throughout Malaysia on a 75:25 debt equity ratio for seven years (Project). BPMB's unilateral action resulted in the failure of the respondent to pay off its contractors and suppliers. Learned counsel for the respondent informed the court that the respondent intend to take action against BPMB in respect of the frozen loan;

(c) the respondent has no choice but to look for independent third party financiers to come in to fund the project. Various parties came forward and after a series of negotiations over a period of six months, the respondent had identified one investor. The potential investor is a Government linked corporation in the Peoples Republic of China and is the owner of certain proprietary network technologies related to the delivery of internet, pay TV and other related services and ("the investor") has the financial resources, expertise and skills to complement and to support the respondent's business and the project. The investor has agreed to acquire a 40% interest in the respondent for a minimum sum of RM1.4 billion. This money will go towards funding the project and will be paid in separate tranches over a period of time. The timelines for the said injection is presently still being worked out between the parties, but in any event, will not take more than six months to fall in. The respondent attached a copy of its business plan for 2016 as exh. "SS3" encl. 16;

(d) the parties has concluded the agreement and in the process of completion. The respondent could not disclose details of the arrangement between it and the investor due to the confidentiality provision in the memorandum of understanding it signed with the investor.

(e) the injection of capital by the investor could not be done earlier as contemplated because the respondent's representative, Tan Sri Kenneth Eswaran, who is dealing with the matter had suddenly taken ill and admitted to hospital and diagnosed with influenza A (H1N1). He was told to remain in hospital for a few more weeks given the severity of his condition. A copy of a letter from Prince Court Medical Centre dated 29 February 2016 is attached as exh. "SS4" encl. 16.

[12] Besides the above reasons, the respondent also relied on the grounds opposing the petition which is as follows:

(a) the business of the respondent will have the end result of providing Malaysian citizens with the most affordable high speed Internet and television service in the country. This is in line with the Government's national broadband initiative objectives which aim to provide internet access to as many Malaysians as possible, particularly within the areas outside developed townships;

(b) the respondent had in excess of 500 workers (including contract workers) under its payroll before the bank unilaterally froze the loan facility. After the investor's injection of funds, the respondent is looking at providing employment to more than 1,200 workers within the next 18 months to complete the project;

(c) the contributories of the respondent, namely, the ABN Media Group Sdn Bhd, Kurnia Mantap Sdn Bhd and Mutu Pedoman Sdn Bhd have no objection to the application herein. Letters from the contributories are attached as exh. "SS6" encl. 16;

(d) the respondent has served a copy of the application for stay on Arris Solutions Inc, Arris Technology Inc and Arris Solutions Malaysia Sdn Bhd (collectively referred to as "creditors");

(e) in the event the petition is heard and ABN is wound up, the petitioner and all other creditors are unlikely to recover the monies outstanding to them as BPMB has first right of recovery over all other creditors; and

(f) the indicative equity value and net project value of the respondent as projected by Ernst & Young Malaysia on 14 February 2012 would stand in excess of RM1.624 billion after its seventh year in operation with a possibility of its value reaching RM2.627 billion, which clearly demonstrates that the value of the respondent and the project is far in excess of any and all money owed to the petitioner and all other creditors. A copy of the valuation report by Messrs Ernst & Young dated 14 February 2016 is marked as exh. "SS7" encl. 16.

[13] On 1 April 2016 the respondent filed a further affidavit (encl. 26) and averred as follows:

(a) that the potential investor has now (as at 1 April 2016) agreed to acquire 49% of the respondent company rather than the initial 40%. The structure of the investment has been agreed and involves an injection of RM1.4 billion. Copies of letters from the potential investor to the respondent is attached as "exh. T1" encl. 26;

(b) a memorandum of understanding (MOU) between the investor, that is, China United Resources Development Group Co Ltd, the respondent and its shareholders was signed on 20 January 2016 and will be completed before end of September 2016. Thereafter all creditors will be able to be paid in full without exception. The respondent attached pp. 1, 9, 10 and 14 of the said MOU marked as "exh. T2" encl. 26; and

(c) Tan Sri Kenneth Eswaran who represented the respondent in its dealing with the investor is not able to speak as he has still to regain his voice but is on the road to recovery. He is expected to be back at work before end of April 2016. The respondent attached copies of the medical certificate from Prince Court Medical Centre dated 18 March 2016 (not fit for duties from 21 March 2016-4 April 2016) and the discharge summary of Tan Sri Kenneth Eswaran as "exh. P1" encl. 27.

[14] In his oral submission learned counsel for the respondent pointed out that the creditors is not objecting to the stay but only the duration of stay. He submitted the court ought to take into consideration the interest of the creditors. It is the respondent's view that the current position is much stronger than a s. 176 of the Companies Act situation where negotiation is carried out with the creditors for a compromise or arrangement of the creditors right. However in the instant case it is injection of capital and in the process of completing the transaction which could not be done earlier because Tan Sri Kenneth Eswaran had contracted H1N1. The initial capital injection of RM1.4 billion would now be increased since the investor had proposed to take over 49% of the respondent's shares.

[15] Premise on the above, the respondent submitted there are special circumstances which warrant a stay of the petition. In the event the winding up court is not agreeable to stay the winding up proceeding for six months, the respondent prayed for a three month stay. The respondent will then report to the court in respect of the status of the joint venture arrangement with the investor. The respondent further submitted that the petitioner will be minimally prejudiced through the stay because the petitioner will be compensated with interest and cost.

The Petitioner's Submission

[16] The petitioner resisted the application for stay (encl. 18), contending there is no special circumstances to warrant the court to grant a stay of the winding up proceeding and hearing of the petition. The petitioner is not in the know of the investor. The petitioner submitted there is no cogent evidence to show capital injection, rather it is merely a prospect of the same and mere negotiation between the parties. Furthermore the respondent failed to disclose the MOU.

[17] The petitioner further submitted the BPMB loan has got nothing to do with the debt which remain unsatisfied by the respondent. In essence the petitioner contended no matter what grounds the respondent relied on, the true fact remains the respondent is currently unable to pay its debts. The debt which was obtained pursuant to a court judgment dated 18 September 2015 is an undisputed debt. The respondent has even admitted to be indebted to the petitioner. The respondent has not demonstrated it can pay its debts and as such had failed to rebut the presumption. Therefore the petitioner submitted it is just and equitable to wind up the respondent.

[18] The creditors had an affidavit (encl. 24) affirmed on behalf of them by the Senior International Credit Manager of ARRIS International Plc the ultimate parent company of the ARRIS group of companies. The creditors stated as follows:

(a) ARRIS Technology, Inc was acquired by ARRIS Group Inc and as part of its internal organisation, all debts owed/owing (RM48,133,369.76) by the respondent to ARRIS Technology were assigned to ARRIS Solutions, Inc.

(b) though they were informed by the respondent of a potential investment by a third party, there are no other information relating to the alleged investment;

(c) they reserve the right to object to any settlement entered into between respondent and the petitioner which may amount to undue preference or unlawful disposition of the respondent's assets during the pendency of the winding up proceeding; and

(d) they were informed the respondent will receive capital injection and/or investment from a third party in or around end of April or early May 2016, as such any adjournment if granted ought to be only up to May 2016 for the respondent to update the court on the status of the capital injection in particular whether it would be able to pay its debts.

Decision

[19] The respondent's notice of motion cited s. 221, s. 243 of the Companies Act, and O. 92 r. 4 of the Rules of Court (ROC) as the enabling provisions for a stay.

[20] Section 243 of the Companies Act provides as follows:

> **243. Power to stay winding up**
>
> (1) At any time after an order for winding up has been made the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for limited time on such terms and conditions as the Court thinks fit.
>
> (2) On any such application the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.
>
> …

[21] The above provision relate to the power of court, subject to proof to the satisfaction of the court, to stay winding up proceedings after an order for winding up has been made by the court (*Vijayalakshmi Devi Nadchatiram v. Dr Mahadevan Nadchatiram & Ors* [1995] 3 CLJ 493; [1995] 2 MLJ 709; *Ting Yuk Kiong v. Mawar Biru Sdn Bhd & Anor* [1995] 3 CLJ 136; [1995] 2 MLJ 700). Section 243 of the Companies Act is therefore not applicable in the instant case as the respondent has yet to be wound up.

[22] Whereas O. 92 r. 4 of the ROC provides as follows:

> **Inherent powers of the Court (O. 92, r. 4)**
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> 4. For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[23] The above provision is similar to O. 92 r. 4 of the Rules of High Court 1980 (RHC 1980). The Supreme Court in *Permodalan MBF Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors* [1988] 1 CLJ 31; [1988] 1 CLJ (Rep) 244; [1988] 1 MLJ 178 held where the rules (RHC 1980) contain provisions making available sufficient remedies, the court will not invoke its inherent powers. *Permodalan MBF Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors (supra)* was referred to in *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307 and the Federal Court ruled the inherent jurisdiction of the High Court cannot be invoked to override the application of a specific rule. Since there is a specific provision which is available for the respondent in the instant case to invoke for purpose of obtaining a stay of the winding up petition and hearing of the petition, O. 92 r. 4 of the ROC is not applicable.

[24] The specific and relevant provision referred to in the preceding paragraph is s. 221 of the Companies Act. That section provides as follows:

Section 221. Powers of Court on hearing petition

(1) On hearing a winding up petition the Court may dismiss it with or without costs or adjourn the hearing conditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets or in the case of a petition by a contributory that there will be no assets available for distribution amongst the contributories.

(2) The Court may on the petition coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition:

(a) direct that any notices be given or steps being taken before or after the hearing of the petition;

(b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules, or by any prior order of the Court;

(c) direct that oral evidence be taken on the petition or any matter relating thereto;

(d) direct a speedy hearing or trial of the petition or any issue or matter;

(e) allow the petition to be amended or withdrawn; and

(f) give such directions as to the proceedings as the Court thinks fit.

[25] In *Boon Wah Air-Conditioning Engineering Sdn Bhd v. Bina Goodyear Bhd* [2014] 1 LNS 1481; [2014] 7 MLJ 679, the respondent applied under s. 221 of the Companies Act for the winding up petition presented by the petitioner to be adjourned pending the conclusion of the respondent's application under s. 176 of the Companies Act. The learned judge held:

[11] The court hearing a winding up petition is empowered to adjourn the hearing conditionally or unconditionally (s. 221 of the CA). The granting of an adjournment is in the absolute discretion of the court. Be that as it may, the discretion must be exercised judiciously. In exercising its discretion, the court must consider all the relevant facts of the case (see *Ayer Molek Rubber Co Bhd v. Mirra Sdn Bhd* [2007] MLJU 704; [2008] 2 CLJ 459 (CA)).

[26] As regards to the stay proceeding, cases of high authorities have held it is incumbent upon the applicant in a stay application to prove there is special circumstances or special grounds to justify a stay. The Court of Appeal in *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd* [2002] 3 CLJ 380; [2003] MLJ 49 held:

… the special circumstances must be special, not ordinary, common or usual circumstances and that go to the execution of the judgment and not to the validity or correctness of the judgment (or merits of the appeal).

[27] The Federal Court in *Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1; [2004] 1 MLJ 257 had this to say:

> As Ian HC Chin JC (as he then was) said in *Government of Malaysia v. Datuk Haji Kadir Mohamad Mastan and Another Case* [1993] 4 CLJ 98 at pp. 101-102:
>
> > An attempt was made to define special circumstances by Raja Azlan Shah (as His Majesty then was) in the case of *Leong Poh Shee v. Ng Kat Chong* [1996] 1 MLJ 86, *viz:*
> >
> > > Special circumstances, as the phrase implies, must be special under the circumstances as distinguished from ordinary circumstances. It must be something exceptional in character, something that exceeds or excels in some way that which is usual or common.
>
> The definition only serves to emphasise the fact that there are myriad circumstances that could constitute special circumstances with each case depending on its own facts. I am of the opinion that the list of factors constituting special circumstances is infinite and could grow with time. Any attempt to limit the list or close a category would be to impose a fetter on the exercise of the discretion of the court whether to grant or stay an execution; making the discretion less of a discretion. This is surely not what discretion is all about.
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> It is therefore clear beyond doubt that there are many factors that may constitute special circumstances and the fact that an appeal would be rendered nugatory if stay was refused is the most common one. It is an example of special circumstances.

[28] Essentially what amounts to special circumstances would depend on the facts of each case. In the instant case, as rightly contended by the petitioner, the respondent is unable to pay the debt demanded by the petitioner and therefore the respondent ought to be wound up. The respondent admits the debt of RM7,057,254 it owe the petitioner. However it deny it is not able to pay the debt because the respondent is in the midst of completing the joint venture arrangement with a third party to pump money into the respondent company for purpose of revitalising the respondent back to action including to pay off its creditors including the petitioner. Pending the completion of such arrangement, the respondent sought for the winding up proceeding to be stayed for six months.

[29] The issue is whether there are special circumstances to justify the court to exercise its discretion to order a stay of the winding up proceeding and hearing of the petition. The court took into consideration the petitioner's strong stand resisting the stay application, in particular its contention that the BPMB loan has got nothing to do with the petitioner. The court concede for it is not for the winding up court to deal with the BPBM loan issue as the winding up court is concern with the petitioner's petition and the respondent's application for stay. The judgment debt which remain

unsatisfied has raise the insolvency presumption against the respondent. Since thus far the respondent has not rebut the presumption, the respondent ought to be wound up.

[30] However taking into consideration the principles established and facts of the instant case in its totality, it is my considered opinion that there are special circumstances which warrants the court to concede to the respondent's application for a stay. The circumstances as derived from the facts of the instant case which is exceptional in character and not ordinary is as follows:

(a) the respondent's shareholders who are the contributory support the stay. The shareholders had executed the MOU to sell some of their share interest in the respondent company for purpose of, among others, to settle the respondent's debt;

(b) the respondent had taken steps and made serious efforts to solve its financial problem with its creditors including the petitioner. The respondent had initiated a meeting with the petitioner to agree on a schedule of payment. Though the meeting did not lead to any agreement, compromise or settlement it show an honest effort on the respondent's part to deal with the debt it owe the petitioner, a debt which was not disputed by the respondent;

(c) learned counsel for the respondent informed the court that negotiations were carried out between the respondent and the investor since 2015. Based on the letters issued by the investor (exh. "T1" encl. 26), the reasonable inference to be drawn is that the investor's interest in the project and to inject capital into the respondent is real and genuine. The respondent and the investor had finalised the terms of the joint venture arrangement and is to be completed. The MOU between the investor, the respondent and its shareholders was executed on 20 January 2016. However due to the confidentiality clause in the MOU, the respondent is prevented from disclosing details of the said arrangement (see exh. "T2" encl. 26);

(d) the ongoing discussion to complete the joint venture arrangement hit a snag due to the respondent's representative who deals with the investor was suddenly taken ill and had to be hospitalised, followed by a long recovery period. There is evidence (exh. "SS4" encl. 16 and exh. "P1" encl. 27) to certify the medical condition of the said representative. This has delay the completion of the joint venture arrangement between the respondent and investor. This is unfortunate and certainly not anticipated by the parties who had expected to complete the said arrangement earlier especially the respondent, in view of the imminently threatening winding up proceeding and petition;

(e) the proposed capital injection by the investor (estimated at RM1.4 billion) if fell through, will settle in full the debts owing to the petitioner and the creditors. This would certainly be better than a situation where the respondent is wound up and its creditors left with nothing especially so when BPMB is a secured creditor and its debt will take priority over unsecured creditors including the petitioner and the creditor. This is due to the various security created by the respondent in favour of BPMB to secure the repayment of the RM450 million loan. Among the security executed by the respondent was a debenture creating a fixed and floating charge over all present and future assets of the respondent both movable and immovable;

(f) the petitioner contended the proposed injection is merely a prospect and nothing concrete and there is no cogent evidence to show capital injection. It is indeed true at this juncture the injection of capital is a mere prospect but as in all business proposal, details need to be discussed and negotiated especially when the industry concerned entails huge capital. Due to the fact that parties are still in the process of completing the joint venture arrangement, it is not possible at this juncture for the respondent to show capital injunction. What is shown by the respondent at this juncture is a MOU executed between the respondent, its shareholders and the investor. Though only four pages of the MOU is exhibited (due to the constraint impose pursuant to the confidentiality provision which is provided in what appears to be cl. 16 of the MOU – see exh. "T2" encl. 26), the court is of the view the execution of the MOU speaks for itself in terms of the respondent's commitment to deal with its financial position in order to salvage its very existence as a going concern and a commercially solvent entity. As such the serious and earnest effort made by the respondent and the investor should be allowed to continue especially so when the end result would benefit the petitioner and other creditors of the respondent;

(g) the investor is a foreigner and the parties are looking at an investment in the sum of RM1.4 billion (if the investor takes 49% of the respondent's share as suggested, the amount would be more). Understandably, this would require time to look into the details of the terms of the joint venture agreement especially, as in any other business undertaking, the feasibility and viability of the project. Furthermore the services which the respondent provides involve licence issued by the relevant regulatory body. This would presumably entails consultation and approval of the relevant regulatory body or authority especially so when foreign investor is involved;

(h) the capital injection by the investor would make the respondent commercially viable and able to function as a going concern to contribute to the Government's agenda of providing affordable high speed Internet and television service to the people. Besides that, the respondent had averred when the project is revived it will be employing 1,200 workers to complete the project. This job opportunities is certainly in favour of the public interest; and

(i) even though the creditors support the petition, they are willing to give time to the respondent to pursue and complete the arrangement with the investor. The court view the creditors' stand is the most reasonable thing to do given the circumstances. This is because the creditors being the majority creditor in value (claiming total debt of about RM48 million which is about 75% of the respondent's debt) would be adversely affected if the respondent is wound up as BPMB secured debt takes priority over the debt of the creditor and other creditors who are unsecured. However the creditors proposed a stay be granted only up to May 2016 and not six months as sought by the respondent. Though the creditors debt is not in the form of a judgment debt as in the petitioner's case, the petitioner's debt is 20% of the respondent's debt compared to the creditors debt of 75%. Though the view of the creditors is not a decisive factor, being a majority creditor in value the court ought to consider the creditors stand.

[31] Based on the foregoing reasons, the court ordered that the winding up proceeding and the hearing of the petition be stayed for a period of three months and a date was fixed for the respondent to inform the court the outcome of the ongoing discussion between respondent and investor.